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# **The BANKING DEPARTMENT NEWSLETTER**

## **Winter 2004**

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[www.nh.gov/banking](http://www.nh.gov/banking)

### **Note from the Commissioner**

Earlier this week, I issued a press release on an apparent telephone scam to obtain consumers' financial account information. In this particular case, a member of a credit union received a telephone call from someone who purported to be calling on "behalf of the New Hampshire Banking Commissioner." The caller stated there had been fraudulent activity in the member's account but the perpetrator had been caught. But, in order to "correct" the member's account, the caller needed the account information so they (presumably, the Bank Commissioner) could get the member's money back in the account.

I am sure that everyone reading this newsletter knows that: (1) The Bank Commissioner is not calling anyone to ask for their personal financial information and (2) you should NEVER give out personal financial information over the telephone or email. But, even though you may not be fooled by this or some other type of scam, you know friends, relatives or neighbors that could be taken in by this type of criminal activity. Unfortunately, the elderly are especially vulnerable to these scams.

I urge all of you to spread the word. Institutions such as banks and credit unions can periodically include a warning in mailings to your members or customers. Put a warning in bold letters on your website. Whenever you have any contact with your members or customers, remind them to safeguard their financial information. Make sure that your customers or members know your policy on obtaining private financial information.

If you receive information about a potential scam, contact the Banking Department so that we can spread the warning to other citizens. With your help, we may save someone from suffering this type of scam.

One type of fraud that is being used is known as Phishing. Phishing is when a group of emails are sent out as if they were from a particular institution, requesting that the consumer click on a link embedded in the email to verify their account information. Once the consumer clicks on the embedded link they will be directed to a site that has a field for the consumer to input their personal and account information. Once the consumer clicks on "submit", the consumer is directed to the institution's website. Institutions need to remind their consumers periodically of the institutions' policies concerning requests for information. The FDIC has issued guidance alerting financial institutions to the increasing prevalence of e-mail and Internet-related fraudulent schemes. To read more, go to <http://www.fdic.gov/news/news/financial/2004/fil2704a.html>

### **Escrow Rate**

The escrow rate for the period February 1, 2004 through July 31, 2004 is 0.00%.

### **BANKING DIVISION NEWS**

Charles M. O'Connor – Chief Bank Examiner

### **Banking Information for Year End 2003**

At year-end the department regulated 65 institutions. This was comprised of 22 banks, 24 credit unions, 15 non-depositories, and 4 trust departments. Also at year-end total assets of all 65 entities were \$17.2 billion, with regulatory capital at \$2.0 billion, an increase of 10.83% in assets and 13.24% in regulatory capital respectively over year-end 2002. Non-depositories reported \$79.9 billion in fiduciary assets, a 33.76% decrease from year-end 2002.

## **BAN 701**

All financial institutions, with the exception of Credit Unions, need to ensure that their Annual Reports comply with BAN 701. BAN 701 requires the following:

### **Ban 701 FORMAT OF AUDIT REPORTS FOR ALL FINANCIAL INSTITUTIONS, EXCEPT CREDIT UNIONS**

Ban 701.01 Review of Internal Audit Program by External Auditor. The external auditor's annual review of the internal audit procedures and subsequent report to the board of directors/trustees shall include the following:

- (a) A statement of whether the internal auditors of the financial institution are autonomous from officers and employees and are accountable directly to the board of directors/trustees;
- (b) A description of the internal audit program for the financial institution;
- (c) An opinion of whether controls and operational procedures are functioning in a manner that minimizes the possibility of losses due to inefficiencies, irregularities, and/or willful manipulation; and
- (d) A detailed list of exceptions and deficiencies in internal audit procedures.

Ban 701.02 Bank Holding Company Reports. Bank holding companies that conduct a consolidated audit of both the parent corporation and its subsidiaries may provide the commissioner with a consolidated audit report of the holding company and its subsidiaries in satisfaction of the requirements of RSA 384:43, provided that the review of the internal audit procedures of New Hampshire chartered bank subsidiaries complies with the provisions of Ban 701.01.

## **Liquidity**

As deposit growth slows or declines, liquidity analysis increases in importance. Liquidity analysis should be done by Cash Flow analysis and scenarios should include, expected, worst case, with solutions assessed for any cash flow gaps identified. The Federal Reserve has

issued guidelines (SR 03-15), which are available on their website.

## **Post Examination Surveys**

The department recently instituted a "Post Examination Survey" program. The program is designed as a forum for a financial institution's management to comment on recently completed examinations. The survey requests management's views on: the pre-examination planning, the examiners, the examination process, the examination report, and an overall view of the examination process.

Management responses are greatly encouraged. The completed surveys will enable the department to improve the examination function. As the saying goes, your responses will allow us at the department to improve on our weaknesses and to make better use of our strengths.

The success of this survey process depends on your forthright input, and on our willingness and ability to change. Please make sure you take the time to complete and return the survey. We look forward to hearing from you.

## **Consumer Complaints**

When the department receives a written response from a bank or credit union regarding a consumer complaint, it is department policy to forward a copy of the response to the complainant. If there is information that the bank or credit union would like to convey to only the department and no other party, the bank or credit union should send the department two response letters -- one addressed to the department and one addressed to the complainant.

## **Requests for Information**

Institutions will soon receive a request to provide the department with the names of two contact people in the event of an emergency. The individuals should be senior level people within the institution (such as President, CEO, COO, CFO). An "Emergency Contact Form" is available on our website. All information will be kept confidential. If you have any questions, you may contact Chief Examiner Charles O'Connor.

The department is also requesting home and e-mail addresses for members of the institution's Board of Directors/Trustees for the purpose of transmitting the department's Quarterly Newsletter. The "Board of Directors/Trustees Information Form" is available on the Department's

website. You may forward the form to Carolyn Bond via mail or email the form to [cbond@banking.state.nh.us](mailto:cbond@banking.state.nh.us).

### **New CTRs**

Treasury's Financial Crimes Enforcement Network (FinCEN) has issued a new form (FinCEN Form 104) to replace the IRS's CTR Form 4789. Banks may continue to use the old IRS Form to report transactions of \$10,000 or more until August 31, 2004. After that date you must use the new FinCEN form. The new form can be used today, if you wish. For more details on the form and optional filing methods (on-line or via magnetic media), visit [www.fincen.gov](http://www.fincen.gov).

### **CONSUMER CREDIT DIVISION NEWS**

Mary L. Jurta – Director of Consumer Credit

Hello from the Consumer Credit Division. We have completed our first renewal cycle using the expedited process for those of you who hold sales finance, retail seller, small loan or mortgage banker or broker licenses and we hope it has been well received. We are still following up on a few companies who failed to renew.

The renewal cycle was immediately followed by the annual report filing deadline. The annual report captures loan activities conducted by the company during the last calendar year and some other information that was previously required at renewal time. We hope to wrap up the data entry process for the annual reports and get notices out to those of you who need to provide further information or failed to file the report. Anyone, except retail sellers, who has not filed an annual report (due on February 2, 2004) should be aware that a statutory penalty of \$25 per day accrues for each day of delinquency.

A new requirement for financial statement filings went into effect last summer. Prior to that time, financial statements were filed at renewal time, which made most of them stale by the time we received and reviewed them. Now, all licensees, except retail sellers, must file a copy of their financial statements within ninety (90) days of the company's fiscal year end. Most licensees have a December 31st fiscal year end date and that means that the financial statement is due to be received in this office on or before Tuesday, March 30, 2004.

Similar to the statutory requirements for annual reports, failure to file a financial statement results in a penalty of \$25 per day. The company may file one financial statement and that will fulfill the filing requirement under each statute (if the company holds more than one type of license); but if the company fails to file its financial statement on time and the company holds more than one type of license, the penalty under each statute for which each license is issued will be statutorily assessed. In other words, if a company holds a first mortgage license and files late, it will be assessed \$25 per day. If a company holds both first and second mortgage licenses, a \$25 per day penalty will be assessed under each statute (RSA 397-A for first mortgage and 398-A for second mortgage) that is being violated for a total of \$50 per day until the financial statement is received by the department.

Companies should file their audited financial statements, if available. If audited financial statements were not prepared, the company must prepare a financial statement in accordance with generally accepted accounting principles with appropriate note disclosures. A first mortgage banker, second mortgage home loan lender, sales finance company, small loan lender shall file a financial statement that includes a balance sheet, income statement, statement of changes in owners' equity and a cash flow statement. A first mortgage broker's financial statement shall include a balance sheet or a statement of net worth. If the financial statement is not audited, a certification statement shall be attached and signed by a duly authorized officer of the licensee. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge.

Please note that filing the financial statements of a licensee's parent company or consolidated financial statements do not fulfill the requirements under the statute. Financial statements must reflect the business activities and assets of the licensee itself.

### **Consumer Information Privacy**

We would like to remind companies about their responsibility to protect consumers' personal information. Licensed companies should develop policies and reduce them to writing regarding personal and financial information gathered from consumers in anticipation of a loan. This protection extends to documents submitted to New Hampshire registered agents in contemplation of a

department examination. While the documents are at the registered agent's office, they should be protected from discovery and misuse. Once the examination is completed, the registered agent should be instructed to immediately return the documents to the licensed company that was examined.

### **Consumer Complaints**

In order to improve the consumer complaint process, the Department is now able to accommodate requests from licensees to send complaints to a specific department or person. To change who receives your complaints, please have the officer of record inform the Department in writing of the new contact and their address. Please address this correspondence to :

New Hampshire Banking Department  
ATTN: Andrea Boudreau, Esq.  
64B Old Suncook Road  
Concord, New Hampshire 03301